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AUG 27 2010

OFFICE OF PETITIONS

In re Patent No. 7,732,149 : DECISION ON REQUEST FOR
Kojima et al. : RECONSIDERATION OF
Issue Date: June 8, 2010 : PATENT TERM ADJUSTMENT AND
Application No. 10/511,993 : NOTICE OF INTENT TO ISSUE
Filed: March 28, 2005 : CERTIFICATE OF CORRECTION
Attorney Docket No.14875-135US1:

This is a decision on the petition filed on August 9, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, one hundred and forty (1,140) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The term of the above-identified patent is extended or adjusted by **nine hundred and twenty-one (921) days**.

37 CFR 1.703(b) indicates that the period of adjustment under 37 CFR 1.702(b) ("over three year period") is the number of days, if any, in the period beginning on the day after the date that is three years after the actual filing date of the application and ending on the date a patent was issued. 35 U.S.C. 154(b)(1)(B). However, 37 CFR 1.703(b) also sets forth the limitations on patent term adjustment specified in 35 U.S.C. 154(b)(1)(B)(i) and (ii). Specifically, 37 CFR 1.703(b)(4) provides that the period of adjustment of the term of a patent shall not include the period equal to the sum of the period of pendency consumed by appellate review under 35 U.S.C. 134, 141,

145, whether successful or unsuccessful (35 U.S.C. 154(b)(1)(B)(ii)). Patentees failed to account for the filing of the notice of appeal on May 13, 2009. The Office reminds patentee that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the period consumed by appellate review is 219 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, May 13, 2009, and ending on the day the notice of allowance was mailed, December 18, 2009. Accordingly, the patent term adjustment is 921 days (437 days of A delay + 737 days of B delay - 33 days of overlap¹ - 220 days of applicant delay¹).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges the submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fee is due.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office

¹ No consideration will be given to patentee's arguments of an additional reduction for matters that occurred prior to the mailing of the notice of allowance. Further to this point, PALM records indicate that the issue fee payment was received in the Office on March 26, 2010. No application for patent term adjustment preceded the payment of the issue fee. The period for filing an application for patent term adjustment requesting reconsideration of the initial determination of patent term adjustment at the time of mailing of the notice of allowance ended March 26, 2010. Accordingly, relative to patentee's assertions of adjustments to the patent term entered prior to the mailing of the Notice of Allowance, it is appropriate to dismiss these arguments as untimely filed under § 1.705(b).

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will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **nine hundred and twenty-one (921) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,732,149 B2

DATED : Jun. 8, 2010

INVENTOR(S) : Kojima et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (922) days

Delete the phrase "by 922 days" and insert – by 921 days--